

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

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PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 18148 of 2004

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Between:

Sabavath sali, W/o.Poria, Gouthapur village, Balanagar
mandal, Mahabubnagar Dist.

..... PETITIONER

AND

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1 Udthiya Mothi, W/o.Haria, R/o.Udithya Tanda,

H/o.Vanavaniguda Under Gouthapur village,
Balanagar Mandal, Mahabubnagar Dist.

2 The Election officer (MPDO, Balanagar), Mahaboobnagar

District.

3 The District Election Authority-cum-District Collector,

Mahaboobnagar.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records connected with the order in O.P.No.14/2001 dated 10-8-2004 from the junior civil judge cum Election Tribunal, Jadcherla and set aside the same by declaring that the election of the petitioner as sarpanch of gouthapur Gram panchayat, Balanagar Mandal, Mahabubnagar Dist., as legal and in accordance with the law, by issuing a writ of certiorari.

Counsel for the Petitioner: MR. VENKATARAGHU RAMULU

Counsel for Respondent No.1: Mr. A. Sudershan Reddy.

Counsel for Respondents 2 & 3: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court at the admission stage made the following :

ORDER:

The election of the petitioner as Sarpanch of Gram Panchayat, Gouthapur Village, Balanagar Mandal was challenged by the first respondent in Election Petition being O.P.No.14 of 2001 before the Junior Civil Judge, Jadcherla, whereunder the petitioner's election was set aside by the Junior Civil Judge by the impugned order dated 10-8-2004. The legality and validity of the said order is challenged in this writ petition contending that the first respondent has not placed any material to show that she approached several authorities for fixing the elections and not to declare the petitioner's election as unanimous, which is reserved for Scheduled Tribe woman. The first respondent has not discharged the burden cast on her about the fraud played against her in filing of withdrawal form on her behalf before the Election Officer. In the absence of any such complaint, election petition with untenable grounds filed by the first respondent ought not have been taken note of by the Election Tribunal.

The facts in the election petition filed by the first respondent herein are that she contested the election, which is reserved for Scheduled Tribe woman, along with the petitioner herein by filing nominations. But the petitioner herein with a view to win the election, without there being any contest, put the thumb impression of some body on the withdrawal form, and presented it to the Election Officer pretending that the first respondent herein withdrew from the election which led to declaring the election of the petitioner herein as uncontested. The petitioner herein has not filed any counter affidavit in the said proceedings and was set ex parte. Whereas the Election Officer, who is the second respondent in election petition filed counter affidavit and the third respondent also adopted the counter affidavit filed by the second respondent therein. To prove the case of the first respondent herein, she examined herself and 2 more witnesses as PWs.1 to 3 on her behalf and Exs.A1 to A4 were marked. The admitted signatures were sent for the expert's opinion to examine the document Ex.A3-withdrawal form alleged to have been submitted by the first respondent herein and her thumb impression with that of specimen of her right and left thumb impression obtained in the open court. The Finger Prints Expert marked the thumb impression on withdrawal form as 'D' and specimen right thumb impression as 'S1' and the left thumb impression as 'S2' and submitted his report as

under:

“ The disputed left thumb impression against her name as ‘Moti’ marked ‘D’ on the withdrawal notice in O.P.No.14/2001 dated 8-8-2001 has been compared with the specimen right and left thumb impression marked as S1 and S2 respectively, of Udithya Moti obtained on plain sheet of white paper in the open court, on 23-7-2003 and found that the dispute thumb impression marked as ‘D’ is not identical with the specimen right and left thumb impression marked as S1 and S2 of Udithya Moti’

- a. Different and difference in formation of petition (the disputed thumb impression marked as ‘D’ is a loop pattern having slope of ridges towards left side whereas the specimen right thumb impression marked S1 is a loop pattern having slope of ridges towards right side).
- b. Vide photo comparison chart showing the non-identical ridge characteristics. In the disputed left thumb impression with marked ‘D’ with the specimen left thumb impression ‘S2’. In substantiation of my opinion I have prepared photo comparison chart showing non-identical ridge characteristics in impressions marked ‘D’ and ‘S2’.

After analyzing the evidence and the report of the Finger Prints Expert, the lower court concluded that the withdrawal form under Ex.A3 filed by the petitioner herein is impersonation of the first respondent herein. It also gives an inference to draw the presumption against the petitioner herein under Section 114 of Indian Evidence Act, as she failed to contest the matter in spite of specific allegation that she impersonated the thumb impression of the first respondent on the withdrawal form, fraudulently to get herself elected unopposed, which would show that she submitted the withdrawal form impersonating the signature of the first respondent, since she is the beneficiary of her declaring as elected uncontested and accordingly The Election Tribunal set aside the election of the petitioner herein directing the Election Officer to follow the Rules contemplated under the A.P. Panchyat Raj (Election Tribunal in respect of Gram Panchayat, Mandal Parishads and Zilla Parishads) Rules, 1995.

After perusing the impugned order, the submission made by the learned counsel for the petitioner that respondent No.1 failed to discharge her burden to prove the fraud played is contrary to record, and cannot be countenanced. Equally, the respondent had not apprehend the authorities without appraising that the first respondent has not withdrawn from the contest, cannot challenge the election petition is devoid of merits. It is well settled that once the withdrawal has taken place, there is only one valid nomination and once the petitioner was declared

elected only remedy is filing of Election Petition as held by Apex Court in **Sohanlal V. Babu Gandhi & Others**. No infirmity is discernible from the impugned order passed by the court below, which warrants exercise of Certiorari jurisdiction of this court.

Accordingly, the Writ Petition is dismissed. No costs.

A. Gopal Reddy, J.

8th October, 2004.

Js.

ASSISTANT REGISTRAR

To

1 The Election officer (MPDO, Balanagar), Mahaboobnagar

District.

2 The District Election Authority-cum-District Collector,

Mahaboobnagar.

3 2 CCs to G.P. for Panchayat Raj & Rural Development, High

Court Buildings, Hyderabad.

4 2 CD copies.